

Chapter 23 STORMWATER MANAGEMENT*

***Editor's note:** The city enacted Resolution No. R2007-031 on June 11, 2007, the introductory language of which reads as follows:

AN ORDINANCE AMENDING CUMBERLAND COUNTY CODE

CHAPTER 12, "STORMWATER MANAGEMENT"

THE CUMBERLAND COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS:

Section 1. Chapter 12 of the Cumberland County Code is hereby amended to read, and adopted, as follows:

The provisions of Resolution No. R2007-031 have been included in this Code as Chapter 23.

Cross references: Building code, ch. 7; flood damage prevention, ch. 12; health and sanitation, ch. 13; streets and sidewalks, ch. 24; water and sewers, ch. 28; water supply watershed management and protection, ch. 29.

State law references: Interlocal cooperation, G.S. 160A-460 et seq.

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ARTICLE I. IN GENERAL*

***Editor's note:** Ord. No. S2009-004, § 1, adopted May 26, 2009, amended art. I in its entirety to read as herein set out. Former art. I, §§ 23-1--23-8, pertained to similar subject matter and derived from Res. No. R2007-031, § 1(12-1--12-8), adopted June 11, 2007.

Sec. 23-1. Findings.

The City Council of Fayetteville, North Carolina, makes the following findings:

- (1) North Carolina General Statutes Ch. 160A, Article 16, authorizes the city to acquire, construct, establish, enlarge, improve, maintain, own, operate and contract for the operation of stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types.
 - (2) The establishment of a stormwater management utility that would be accounted for as a separate enterprise fund and would facilitate the provision of a stormwater management program is reasonable and in the public interest.
 - (3) North Carolina General Statute 160A-314 authorizes the city to establish and revise, from time to time, a schedule of rates and charges to fund the stormwater management program activities including both structural and natural stormwater conveyance and drainage system services provided by the stormwater management utility.
- (Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-1.1. Article designation.

This article may be cited as the Stormwater Management Utility Ordinance of the City of Fayetteville.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-1.2. Purpose.

A stormwater management utility is hereby created as an identified fiscal and accounting fund for the purpose of comprehensively addressing the stormwater management needs of the city. The city's stormwater management needs are met herein; (1) through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in stormwater runoff, and the quantity and rate of stormwater received and conveyed by structural and natural stormwater and drainage systems of all types; (2) by establishing a schedule of charges; (3) by defining the control, collection and disbursement of funds; and (4) by setting forth penalties, methods of appeals and exemptions.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-2. Definitions.

As used in this article, unless the context clearly indicates otherwise, the following definitions shall apply:

Credits. Credit shall mean ongoing reductions in the stormwater service charge applicable to a given property in recognition of on-site or off-site systems, facilities, measures, and actions taken by customers to reduce or mitigate the impact of their properties or actions on the peak rate of stormwater runoff from the site or the pollutant

loadings of stormwater runoff from the site. Credits shall be based on their impact on the utility's long-term cost of providing services and facilities, not on the cost to the customer of acquiring, designing, building, operating, maintaining or performing measures or actions to attain a credit. Credits shall be conditioned on the continuing performance of the systems, facilities, measures or actions in reference to standards adopted by the utility upon which the credits are granted, and may be revised or rescinded. In no case shall credits exceed the amount of the stormwater service charge.

Customer. Customer shall mean the person or firm to which a bill for stormwater service charges is sent.

Detached single-family residential. Detached single-family residential shall mean developed land containing one structure which is not attached to another dwelling unit and which contains one or more rooms with a bathroom and kitchen facilities designed for occupancy by one family and shall include single-family houses, single duplex units under common ownership, manufactured homes and mobile homes located on individual lots or parcels of land and residential condominium and townhouse units. Developed land may be classified as "detached single-family residential" despite the presence of incidental structures associated with residential uses such as garages, carports or small storage buildings. "Detached single-family residential" shall not include developed land containing: Structures used primarily for nonresidential purposes; manufactured homes and mobile homes located within manufactured home or mobile home parks; or other multiple unit properties.

Developed land. Developed land shall mean property altered from a natural state that contains impervious surface, and includes improved land without structures and land on which improvements are under construction.

Equivalent residential unit. For the purposes of this article, an equivalent residential unit shall mean 2,266 square feet of impervious surface, which is the average amount of impervious surface within and/or on an average single-family property in the service area.

Exemption. Exemption shall mean not applying to or removing the application of the stormwater utility service charge from a property. No permanent exemption shall be granted based on taxable or nontaxable status or economic status of the property owner. An exemption may be granted based on agreements between the city and other persons, governmental and nongovernmental entities, and organizations whereby they provide approved best management practices and perform on-site and/or off-site stormwater quantity management, including acquiring, designing, building, operating and maintaining systems and facilities, and performing measures and actions or other best management practices which equal or exceed the stormwater utility guidelines. Exemptions may be removed or rescinded at any time by the stormwater utility.

Impervious surface area. Impervious surfaces shall mean those areas within developed land which prevent or significantly impede the infiltration of stormwater into the soil. Common impervious surfaces include, but are not limited to, roof tops, sidewalks, walkways, patio areas, roads, driveways, parking lots, storage areas, brick or concrete pavers and other surfaces which prevent or significantly impede the natural infiltration of stormwater into the soil.

Other properties. Other properties shall mean any developed land not fitting the definition of detached single-family residential. "Other properties" shall include, but not be limited to, attached single-family houses, nonresidential townhouses and condominiums, apartments, boarding houses, hotels and motels, churches, commercial properties which include dwelling units, manufactured home or mobile home parks, commercial and office buildings, storage areas, parking lots and other impervious areas, parks, recreation properties, public and private schools and universities, hospitals and

convalescent centers, office buildings, airports, agricultural uses involving impervious surfaces, water reservoirs, and water and wastewater treatment plants. Real properties which are used for other than single-family residential use located in single-family residential structures or duplexes shall be deemed other properties for the purpose of calculating the stormwater service charge. The definition of "other properties" shall be broadly construed such that any property having areas of impervious coverage shall be subject to the stormwater service charge unless otherwise provided.

Service charge. Service charge shall mean the stormwater service charges applicable to a parcel of developed land which is generally reflective of a parcel's allocable portion of or impact on the cost of providing stormwater utility services and facilities as authorized or provided for herein. The service charge will vary from one parcel of developed land to another based upon the amount of impervious surfaces.

Stormwater. Stormwater shall mean the runoff from precipitation that travels over natural or developed surfaces to the nearest stream, other conduit, or impoundment and appears in lakes, rivers, ponds or other bodies of water.

Stormwater advisory board. Stormwater advisory board shall mean the citizens' advisory board established by this chapter.

Stormwater management program. Stormwater management program shall mean programs designed to protect, restore or manage water quality by controlling, reducing, or managing the level of pollutants in, and controlling, reducing, or managing the velocity, volume and peak flow of, stormwater.

Stormwater manager. Person designated by the city to manage stormwater services and who is charged with certain duties and responsibilities by the ordinance from which this article derives, or that person's duly authorized representative.

Stormwater services. Stormwater services shall mean that organization including its employees as well as other designated personnel that is responsible for implementing the city stormwater management program.

Stormwater system or storm sewer system. Stormwater system or storm sewer system shall mean the system of natural and constructed devices for collecting and transporting stormwater. It includes, but is not limited to, lakes, ponds, rivers, creeks, open ditches, catch basins, pipes, sewers, drains, culverts and other stormwater management facilities.

Stormwater utility. Stormwater utility shall mean the stormwater utility created hereby, including a management structure that shall be responsible solely and specifically for the stormwater management program and system and that is supported through the stormwater utility service charge authorized herein and, if applicable, other general fund appropriations, grants and other revenues appropriated therefore.

Undeveloped land. Undeveloped land shall mean land that does not meet the definition of developed land.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-3. Establishment of a stormwater management utility and enterprise fund.

(a) There is hereby established a stormwater management utility within the engineering and infrastructure department which shall be responsible for stormwater management programs throughout the city, and which shall provide for the management, protection, control, regulation, use and enhancement of stormwater systems and facilities.

(b) There is hereby established a stormwater enterprise fund in the city budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater management utility, including but not

limited to; rentals, rates, charges, fees and licenses as may be established by the city council and other funds that may be transferred or allocated to the stormwater management utility. All revenues and receipts of the stormwater management utility shall be placed in the stormwater enterprise fund and all expenses of the utility shall be paid from the stormwater enterprise fund, except that other revenues receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, facilities, operations, and capital investments as deemed appropriate by the city council.

(c) The city council hereby transfers to the stormwater management utility (stormwater division) operational control over the existing stormwater management programs, systems and facilities performed, provided or owned and heretofore operated by the city and other related assets, including but not limited to properties other than roadways upon which such systems and facilities are located, easements, rights-of-entry and access, and certain equipment used solely for stormwater management.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-3.1. Boundaries and jurisdiction.

The boundaries and jurisdiction of the stormwater management utility shall extend to the corporate limits of the City of Fayetteville, including all areas hereafter annexed thereto.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-4. Impervious surface area and equivalent residential unit.

(a) Impervious surface area on a given land parcel directly relates to the volume, rate and pollutant loading of stormwater runoff discharged from that land parcel to the city's structural and natural drainage systems and facilities. Therefore, impervious surface area shall be the parameter for establishing a rate structure to distribute the cost of services associated with the operation, repair, improvement and maintenance of public drainage systems and facilities through a schedule of rates, fees, charges and penalties related to the operation of a stormwater management utility and stormwater management enterprise fund as established in section 23-3.

(b) Based on an analysis by the city, upon the enactment of the ordinance from which this article derives, of impervious surface area on properties throughout the city, an impervious surface area of 2,266 square feet is hereby designated as one equivalent residential unit (ERU).

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-5. Stormwater service charge rates.

Stormwater service charge rates may be determined and modified from time to time by the Fayetteville City Council so that the total revenue generated by said charges and any other sources of revenues or other resources allocated to stormwater management by the city council to the stormwater management utility shall be sufficient to meet the cost of stormwater management services, systems, and facilities, including but not limited to; the payment of principal and interest on debt obligations, operating expense, capital outlays, nonoperating expense, provisions for prudent reserves, and other costs as deemed appropriate by the city council. The following stormwater service charge rates shall apply:

(1) *Detached single-family residential.* Each developed detached single-family residential property shall be billed and shall pay pursuant to the rate established for one equivalent residential unit (ERU).

(2) *Other properties.* All other developed properties having impervious coverage, including, but not limited to; multifamily residential properties with three or more living units, commercial properties, industrial properties, public and institutional properties, church properties, public and private school properties, and developed vacant properties shall be billed for one ERU for each 2,266 square feet or fraction thereof of impervious coverage on the subject property. There will be no service charge for other properties with fewer than 600 square feet of impervious surface.

(3) *Charge per equivalent residential unit (ERU).* The monthly rate per ERU shall be set by resolution of the Fayetteville City Council and shall be available for public review and inspection in the office of the stormwater utility. The resolution establishing the monthly service charge for each ERU shall reflect the scope of the stormwater management program to be implemented and/or being implemented during the billing period and the actual overall aggregate cost of the stormwater utility. The monthly service charge for each ERU may be amended from time to time pursuant to the city's fee schedule.

(4) *Other fees and charges.* Other fees and charges may be adopted from time to time by the city council incidental to the purposes of stormwater utilities as provided in G.S. 160A-314.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-6. Stormwater service charge billing, delinquencies and collections.

(a) *Method of billing.* Billing and collection of the stormwater service charge and any other fees, charges and penalties for stormwater utility services and facilities may be accomplished in any manner deemed appropriate by the city manager, including but not limited to, including the service charge with the annual property tax billing, enclosing it with or attaching it to the annual property tax billing, or by a separate billing.

(b) *Delinquencies.* A stormwater utility service charge billing or other billing for fees, charges and penalties associated with the stormwater utility shall be delinquent if not paid within 60 days of the date of billing or upon the date of delinquency of the annual property tax billing if the stormwater utility service charge or other billing for fees, charges and penalties is placed upon the annual property tax billing or enclosed with or attached to the annual property tax billing. A delinquent billing shall accumulate an additional penalty at the rate as established for the interest applicable to delinquent, unpaid property taxes and shall run from the date of the original billing. This penalty shall be termed a delinquency penalty charge.

(c) *Appeal of disputed bills, adjustments.* Any customer who believes the provisions of this article have been applied in error may appeal in the following manner and sequence:

(1) An appeal of a stormwater service charge must be filed in writing with the Fayetteville Stormwater Manager within 30 days of the charge being mailed or delivered to the property owner and stating the reasons for the appeal. In the case of stormwater service charge appeals, the appeal shall include a survey prepared by a registered land surveyor or professional engineer containing information on the total property area, the impervious surface area, and any other features or conditions that influence its hydrologic response to rainfall events.

(2) Using information provided by the appellant, the stormwater manager or his designee shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days. In response to an appeal, the stormwater

manager may adjust the stormwater service charge applicable to the property in conformance with the general purposes and intent of this article.

(3) A decision of the stormwater manager that is adverse to an appellant may be further appealed to the city manager or his designee within 30 days of the adverse decision. Notice of the appeal shall be delivered to the city manager or his designee by the appellant, stating the grounds for further appeal. The city manager or his designee shall issue a written decision on the appeal within 30 days. All decisions by the city manager or his designee shall be served on the customer personally or by registered or certified mail, sent to the billing address of the customer.

(4) The appeal process contained in this section shall be exhausted before an aggrieved customer may appeal for judicial review or relief. Further appeal shall be filed within 30 days of the date of the service of the decision of the city manager or his designee.

(d) *No suspension of due date.* No provision of this article allowing for an administrative appeal shall be deemed to suspend the due date of the service charge with payment in full. Any adjustment in the service charge for the person pursuing an appeal shall be made by refund of the amount due.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-7. Exemptions and credits applicable to stormwater service charges.

Except as provided in this section, no public or private property shall be exempt from stormwater utility service charges or receive a credit or offset against such service charges. No exemption, credit, offset or other reduction in stormwater service charges shall be granted based on the age, tax or economic status, race or religion of the customer, or other condition unrelated to the stormwater management utility's cost of providing services, systems and facilities. A stormwater management utility service charge credit manual shall be prepared specifying the design and performance standards of on-site stormwater services, systems, facilities and activities that qualify for application of a service charge credit, and how such credits shall be calculated.

(1) *Credit for mitigation measures.* Other properties which provide and maintain measures and/or facilities that mitigate the impact of impervious coverage on the property upon the stormwater systems, facilities and services provided or to be provided by the stormwater utility shall be eligible for credits, offsets or exemptions proportional to the extent that those measures and/or facilities reduce the impact of peak rate of stormwater discharge and/or annual pollutant loadings emanating from the subject property. Credits shall be applied only against charges billed to the property under the scope of the stormwater management program in effect during the period of the billing and requested credit. Detached single-family residential properties shall not be eligible for credits, offsets or exemptions.

(2) *Credit manual.* A credit manual which prescribes the basis and the manner of calculating the amount of credits permitted pursuant to this chapter shall be adopted from time to time by the Fayetteville City Council.

(3) *Exemptions.* The following exemptions shall be allowed:

a. Improved public road rights-of-way which have been conveyed to and accepted for maintenance by the North Carolina Department of Transportation and are available for use in common for vehicular transportation by the general public shall be exempt from stormwater service charges.

b. Improved public road rights-of-way which have been conveyed to and accepted for maintenance by the City of Fayetteville and are available for use in common for

vehicular transportation by the general public shall be exempt from stormwater service charges.

c. Railroad rights-of-way used for trackage and related appurtenances shall be exempt from stormwater service charges. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from stormwater service charges.

d. All of that property in the City of Fayetteville that is a part of the Fort Bragg Army Federal Military facilities shall be exempt from stormwater service charges.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-8. Stormwater advisory board.

(a) *Established.* The City of Fayetteville Stormwater Advisory Board (hereinafter, "the advisory board") is hereby established. The advisory board shall be appointed in the manner set out in subsection (d) of this section.

(b) *Purposes and duties.*

(1) *Advisory function.* The advisory board shall provide guidance and advice to the city council pertaining to the stormwater management program, including, but not limited to, program activities, functions, systems, management and funding.

(2) *Administrative review.* The advisory board shall have the powers and duty to act in all matters relating to the administrative review of any order, requirement, decision or determination made by the stormwater manager or other administrative official.

(c) *Required vote.* The concurring vote of a simple majority of the members of the advisory board present shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of this chapter.

(d) *Appointment, membership.* The advisory board shall consist of five members representing a diverse cross-section of the city and appointed for staggered terms of two years. The city council appoints members of the advisory board as terms expire and as vacancies in unexpired terms arise. No member of the advisory board shall serve more than two consecutive terms without a period of at least one year intervening between appointments. The chairman and the vice-chairman of the advisory board shall be duly elected by the respective board members. The chairman and the vice-chairman shall be elected to serve in that capacity for a period of one year.

(e) *Regular meetings.* The advisory board shall meet not less than four times annually on a schedule that is approximately quarterly. The advisory board may meet more often than four times annually if it shall so determine. A simple majority of the advisory board shall constitute a quorum for the conduct of business. The advisory board may adopt rules of procedure for the conduct of its meetings and its business, which rules shall generally be consistent with rules of parliamentary procedure. Notice of the meetings of the advisory board shall be given in accordance with and such meetings shall be subject to the North Carolina Open Meetings Law, G.S. Ch. 143, Article 33C and any other applicable statute.

(f) *Emergency meetings.* The advisory board may hold special or emergency meetings if called by the Mayor of the City of Fayetteville, or its chairman. Notice of such meetings of the advisory board shall be given in accordance with and shall be subject to the North Carolina Open Meetings Law, G.S. Ch. 143, Article 33C and any other applicable statute.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-8.1. Severability.

If a section, subsection, or part of this article shall be deemed or found to conflict with a provision of North Carolina law, or other pre-emptive legal principle, then that section, subsection, or part of this article shall be deemed ineffective, but the remaining parts of this article shall remain in full force and effect.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-8.2. Abrogation.

This article is not intended to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued. However, if any provisions or requirements of this article conflict with any existing regulations or ordinances, the more restrictive provisions shall apply.

(Ord. No. S2009-004, § 1, 5-26-2009)

Sec. 23-8.3. Effective date.

This article shall become effective on July 1, 2009.

(Ord. No. S2009-004, § 1, 5-26-2009)

ARTICLE II. ILLICIT CONNECTIONS AND IMPROPER DISPOSAL*

***Editor's note:** Ord. No. S2009-004, § 2, adopted May 26, 2009, amended art. II in its entirety to read as herein set out. Former art. II, §§ 23-9--23-19, pertained to similar subject matter and derived from Res. No. R2007-031, § 1(12-9--12-19), adopted June 11, 2007.

Sec. 23-9. Title; purpose.

This article of this Code shall be and is collectively referred to and cited as "The Illicit Connections and Improper Disposal Article of the City of Fayetteville, North Carolina". The purpose of this article is to protect and promote the public health, safety and welfare by preventing the introduction of potentially harmful materials into the municipal separate storm sewer system within the city, receiving waterways and other waters of the state, and also to maintain and enhance water quality.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-10. Objective.

The general objective of this article is to protect the quality of discharges to waters of the state by the following actions:

- (1) Prohibit nonstormwater discharges to the municipal separate storm sewer system;
- (2) Require the removal of illicit connections to the municipal separate storm sewer system;
- (3) Prohibit improper disposal of substances into the municipal separate storm sewer system; and
- (4) Permit inspection, sampling and monitoring for pollutants such as those associated with illicit connections; improper disposal; activities on industrial, commercial and related facilities; and the application of pesticides, herbicides and fertilizers.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-11. Jurisdiction.

(a) The provisions of this article shall apply to all properties within the corporate limits of the city, including all areas hereafter annexed thereto, and such additional areas lying outside the corporate limits of the city as shall be approved by the city council.

(b) This article provides for the regulation of direct and indirect contributors to the municipal separate storm sewer system and authorizes monitoring activities. No user shall be authorized to discharge stormwater into the municipal separate stormwater sewer system unless such user complies with the terms, conditions and provisions of this article. By discharging stormwater into the municipal separate storm sewer system, all users agree to comply with the terms and conditions established in this article, as well as any permits, enforcement actions or orders issued hereunder. Except as otherwise provided herein, stormwater services (SWS) shall administer, implement and enforce the provisions of this article. Any powers granted to or imposed upon the stormwater manager may be delegated by the stormwater manager to other SWS personnel or other designated personnel as may be necessary.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-12. Authority.

This article is adopted pursuant to portions of one or more of the following authorities in the North Carolina General Statutes: Chapter 153A, Chapter 15 (Criminal Procedure), Chapter 113A (Pollution Control and Environment), Chapter 130A (Public Health), Chapter 160A (Cities and Towns), Chapter 143 (Water and Air Resources), and others as applicable.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-13. Abrogation.

This article is not intended to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued. However, if any provisions or requirements of this article conflict with any existing regulations or ordinances, the more restrictive provisions shall apply.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-13.1. Definitions.

As used in this article, unless the context clearly indicates otherwise, the following definitions shall apply:

Connection shall mean any ditch, pipe or other device for the diversion or transmission of storm drainage which will in any way affect the operation or maintenance of the municipal separate storm sewer system.

Conveyance shall mean any feature of the landscape or earth, manmade or natural, that carries stormwater in a concentrated flow.

Ditch shall mean an open channel that transports stormwater runoff.

Drainage shall mean the flow of stormwater runoff into a conveyance.

Garbage shall mean all putrescible wastes, such as food wastes, animal or vegetable matter, animal offal and carcasses, and recognizable industrial byproducts, but excluding sewage and human wastes.

Illicit connection shall mean any connection to the municipal separate storm sewer which discharges nonpermitted nonstormwater to the municipal separate storm sewer system.

Improper disposal shall mean the releasing of matter or fluids other than atmospheric precipitation at a location where the matter or fluid can enter the municipal separate storm sewer system.

Municipal separate storm sewer system shall mean a conveyance or system of conveyances designed or used for collecting or conveying stormwater (including roads with drainage systems, catch basins, curbs, gutters, ditches, manmade channels or storm drains). (Ref: 40 CFR 122.26 (b)(8)).

National Pollutant Discharge Elimination System (NPDES) shall mean a permitting system established by Section 402 of the Clean Water Act (PL 92-500 as amended). Permits are issued by the State of North Carolina under delegation from EPA for discharges directly to the surface waters of the state pursuant to G.S. 143-215.1.

Noncommercial car washing shall mean any automotive washing performed by individuals or groups for no fee or for a charitable donation. This shall include, but is not limited to; car washes performed by local church groups, schools groups, athletic teams, youth organizations and individuals at their place of residence.

Nonstormwater shall mean any flow which is discharged to the municipal separate storm sewer system which is not from a form of natural precipitation.

Outfall shall mean the point where a municipal separate storm sewer discharges to waters of the state and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the state and are used to convey waters of the state. (Ref: 40 CFR 122.26(b)(9))

Pollution shall mean manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

Refuse shall mean all nonputrescible wastes.

User shall mean any person who contributes, causes or permits the contribution of stormwater into the municipal separate storm sewer system.

Waters of the state, as defined in G.S. 143-212(6), shall mean all streams, lakes, ponds, marshes, watercourses, waterways, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of North Carolina or any portion thereof over which the state has jurisdiction.

Watershed shall mean the entire land area which by virtue of its topography and system of drainage conveyances, conducts stormwater runoff to a specific point of interest (e.g., intake for water supply systems, drainage outfall, etc.). (Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-14. Right of entry.

In order to allow stormwater services to adequately enforce the provisions of this article, stormwater services needs to be provided access to areas where potential violations may occur. The following subsections identify the means by which stormwater services may implement to achieve the aforementioned objectives:

(1) For the purpose of conducting inspections, sampling, monitoring, records examination and copying, or in the performance of any other duties necessary to determine compliance with this article, SWS personnel or other designated personnel upon presentation of proper credentials and identification, are hereby authorized to enter upon private premises, including any building or other structure, subject to this article. Stormwater services shall be provided ready access during regular business hours to all parts of the premises. Nothing in this section shall be construed to free the inspecting or investigating official from any requirement: To obtain the consent of the owner or occupant of the premises concerned, or to obtain an administrative search warrant pursuant to G.S. 15-27.2, or other provisions of the North Carolina General Statutes, or otherwise to view or enter upon such premises in a manner prescribed by law.

(2) Where a person has security measures in force which require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security guards so that upon presentation of suitable identification, stormwater services will be permitted to enter without delay for the purpose of performing their specific responsibilities.

(3) Stormwater services shall have the right to set up on the person's property such temporary devices as are necessary to conduct stormwater sampling.

(4) The person shall not impede or obstruct the safe and easy access to the areas to be inspected and/or monitored. If necessary, stormwater services shall be responsible for providing access to existing nonaccessible locations, such as difficult-to-access outfalls.

(5) Stormwater services may inspect the facilities of any user in order to ensure compliance with the article. Such inspection shall be made with the consent of the owner, manager or signatory official. If stormwater services has been refused access to

a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the SWS designed to verify compliance with this article or any permit of order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the SWS may seek issuance of an administrative search warrant pursuant to G.S. 15-27.2.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-15. Prohibited discharges.

In order to protect the quality of the waters of the State of North Carolina in the city, certain discharges are hereby prohibited that either directly discharge to waters of the state or that discharge to waters of the state through the stormwater drainage system. The following subsections identify the three primary classifications of prohibited discharges, as well as exceptions to the prohibitions:

(1) *Permitted incidental nonstormwater flows.* Stormwater is the only discharge permitted in the municipal separate storm sewer system with the exception of incidental nonstormwater flows which do not negatively impact the quality of the receiving stream. Therefore, it shall be unlawful for any person or persons to discharge nonstormwater to any stormwater conveyance with the exception of the following:

- a. Water line flushing, except super-chlorinated water line flushing;
 - b. Landscape irrigation;
 - c. Diverted stream flows;
 - d. Rising groundwaters;
 - e. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));
 - f. Uncontaminated pumped groundwater;
 - g. Discharges from potable water sources;
 - h. Foundation drains;
 - i. Air conditioning condensation (commercial/residential);
 - j. Irrigation water (does not include reclaimed water as described in 15A NCAC 2H.0200);
 - k. Springs;
 - l. Water from crawl space pumps;
 - m. Footing drains;
 - n. Lawn watering;
 - o. Noncommercial car washing;
 - p. Flows from riparian habitats and wetlands;
 - q. Backwash and draining associated with swimming pools;
 - r. Street wash waters;
 - s. Discharges from emergency fire fighting activities;
 - t. Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state or local government on-scene coordinator;
 - u. Flushing and cleaning of stormwater conveyances with unmodified potable water;
 - v. Washwater from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat; and
 - w. Other nonstormwater discharges for which a valid NPDES discharge permit has been approved and issued by DENR, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by stormwater services.
- If any of the above nonstormwater exceptions are found to be polluted and thus cause a negative impact on the quality of the waters of the state, said situation or occurrence

shall be deemed unlawful and shall not be allowed to discharge to the municipal separate storm sewer system. These conditions shall be determined by the manager of stormwater services or designee. Such situations or occurrences shall be considered an illicit connection or improper disposal as defined in this article.

(2) Illicit connections.

a. Pipelines, ditches and other physical connections carrying nonstormwater may not discharge into the municipal separate storm sewer system with exception of incidental nonstormwater flow which does not negatively impact the quality of the waters of the state, as described in previous the section of this article or as permitted by a NPDES permit. Prohibited discharges include, but are not limited to, wastewater lines such as those from washing machines or sanitary sewers, commercial washwater from cleaning vehicles or equipment, flushing water such as that from industrial operations, floor drains and overflowing septic systems.

b. Raw sewage shall not be emptied into the municipal separate storm sewer system within the corporate limits of the city.

c. It shall be unlawful to discharge to any parts or portions which comprise the stormwater drainage system within the corporate limits of the city any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with the appropriate local authority and with regulations of the division of environmental management, department of environment and natural resources of the state.

d. No water or refuse from any industrial, commercial or institutional process, including uncontaminated water used for heating or cooling, shall be discharged to the municipal separate storm sewer system by any person until such person has obtained the appropriate local, state and federal permits.

(3) Improper disposal.

a. It shall be unlawful for any person to deposit, place, put or discard into or allow to be blown or scattered into, the municipal separate storm sewer system, waters of the state or the banks thereof, at any place within the corporate limits of the city, any solids, fluids or gases of any kind, that will create a litter, nuisance, overflow, change of course, or impediment to the free flow of water therein, or that will pollute said system, or cause it to be polluted, or that will cause an unsanitary condition in such system. These conditions shall be determined by the stormwater manager or his designee.

b. No garbage receptacle shall be cleaned on public property, and no residual garbage or refuse from the cleaning of garbage receptacles shall be allowed to drain into the municipal separate storm sewer system or the waters of the state.

c. It shall be unlawful to place grass clippings, leaves, tree and shrub clippings, or any other yard wastes in any storm drain, stream, stormwater conveyance, or any other location within the corporate limits of the city where concentrated stormwater flows will wash such wastes into the municipal separate storm sewer system.

d. No pigpen, stable, feedlots or animal waste lagoons of any kind shall be permitted to stand so near the municipal separate storm sewer system or the waters of the state that the droppings therefrom will run into the municipal separate storm sewer system or the waters of the state or in any way poison or contaminate the water therein.

(4) Review of stormwater pollution prevention plans. Stormwater services may review the stormwater pollution prevention plans required under a facility's NPDES stormwater discharge permit when outfall monitoring or the illicit discharge/improper disposal program locates a suspected violation.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-16. Enforcement--Illicit connections.

(a) Notice of violation.

(1) Whenever stormwater services finds that any user of the municipal separate storm sewer system is violating this article by having and maintaining an illicit connection to the system, the stormwater manager, or designee, shall serve upon such a person a notice of violation and direct the responsible party to:

- a. Comply immediately;
- b. Comply in accordance with a schedule set forth in the notice, which is normally 30 days; or
- c. Take appropriate remedial or preventative action in the event of a continuing or threatening violation.

(2) No penalty shall be assessed until the person alleged to be in violation has been served written notice of the violation by registered or certified mail, personal service, posting of said notice on the property of the violator, or publication. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty and/or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty shall be assessed by the stormwater manager, or designee, from the date of receipt of the notice of violation. Refusal to accept the notice shall not relieve the violator of the obligation to pay such a penalty.

(b) Civil penalties.

(1) A first time violation of this section of this article shall subject the offender to the assessment of a Category III civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule. Penalties assessed shall be recovered by the City of Fayetteville in a civil action in the nature of debt if the offender does not pay the civil penalty within 30 days after the offender has been assessed the penalty. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

(2) In addition to the per diem civil penalty, penalties for costs incurred by stormwater services during the investigation and restoration process shall be assessed based on costs which include, but are not limited to; sampling, abatement, cleanup and city administrative costs.

(3) Civil penalties collected pursuant to this section shall be credited to the City of Fayetteville General Fund as a nontax revenue.

(4) If any person who previously has been found to have an illicit connection reconnects to the municipal separate storm sewer system within one year, he shall be deemed a second time violator and assessed a Category II civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule. If the person has or is required to have a stormwater discharge permit from the department of environment and natural resources, stormwater services shall notify the appropriate state authorities of the violation.

(5) If any person deemed to have been a second time violator reconnects an illicit connection to the municipal separate storm sewer system within a year, he shall be deemed a third time violator and assessed a Category I civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule. If the person has or is required to have a stormwater discharge permit from the department of environment and natural resources, stormwater services shall notify the appropriate state authorities of the violation.

(6) In the event there are subsequent penalties assessed by the state against the city for illicit connections, caused by any person, such person shall be assessed the equivalent amount of civil penalty.
(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-17. Enforcement--Improper disposal.

(a) *Notice of violation.*

(1) Whenever stormwater services finds that any user of the municipal separate storm sewer system is violating the improper disposal provisions of this article, the stormwater manager, or his designee, shall serve upon such a person a notice of violation and direct the responsible party to:

- a. Comply immediately;
- b. Comply in accordance with a schedule set forth in the notice; or
- c. Take appropriate remedial or preventative action in the event of a continuing or threatening violation.

(2) No penalty shall be assessed until the person alleged to be in violation has been served written notice of the violation by registered or certified mail, personal service, posting of said notice on the property of the violator, or publication. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty and/or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty shall be assessed by the stormwater manager, or designee, from the date of receipt of the notice of violation. Refusal to accept the notice shall not relieve the violator of the obligation to pay such a penalty.

(b) *Civil penalties.* Any person who violates the improper disposal provisions of this article shall be subject to the assessment of a civil penalty. Penalties assessed shall be recovered by the City of Fayetteville in a civil action in the nature of debt if the offender does not pay the civil penalty within 30 days after the offender has been assessed the penalty. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty. Civil penalties shall be assessed in the following categories:

(1) *Waste products.* Any person who is found to have improperly disposed of any substance that is a byproduct of a commercial or industrial process which, upon discharge to the municipal separate storm sewer system or drainage network, would have an adverse impact on water quality or cause the city to be in noncompliance with any applicable environmental permit shall be assessed a Category I civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

(2) *Bulk sales.* Any person who is found to have improperly disposed of any substance that was purchased at a bulk sales location which, upon discharge to the municipal separate storm sewer system or drainage network, would have an adverse impact on water quality or cause the city to be in noncompliance with any applicable environmental permit shall be assessed a Category I civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

(3) *Household products.*

a. Any person who is found to have improperly disposed of any substance that was purchased over-the-counter for household use, in quantities considered normal for household purposes which, upon discharge to the municipal separate storm sewer system or drainage network, would have an adverse impact on water quality or cause

the city to be in noncompliance with any applicable environmental permit shall be assessed a Category II civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

b. Any person cited for a second time offense of improperly disposing of household products within one year, shall be deemed a second time violator and assessed a Category I civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

(4) *Yard waste.*

a. Any person who is found to have improperly disposed of leaves, grass clippings or other yard wastes which, upon discharge to the municipal separate storm sewer system or drainage network, would have an adverse impact on water quality or cause the city to be in noncompliance with any applicable environmental permit shall be assessed a Category III civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

b. Any person cited for a second time offense of improperly disposing of yard waste within one year, shall be deemed a second time violator and assessed a Category II civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

c. Any person cited for a third time offense of improperly disposing of yard waste within one year, shall be deemed a third time violator and assessed a Category I civil penalty in an amount set forth in the schedule of civil penalties to be adopted by the city council. The civil penalties may be amended from time to time pursuant to the city's fee schedule.

(5) In addition to the per diem civil penalty, penalties for costs incurred by stormwater services during the investigation and restoration process shall be assessed based on costs which include, but are not limited to; sampling, abatement, cleanup and city administrative costs.

(6) Civil penalties collected pursuant to this section shall be credited to the City of Fayetteville General Fund as a nontax revenue.

(7) In the event there are subsequent penalties assessed by the state against the city for improper disposal or illegal dumping, caused by any person, such person shall be assessed the equivalent amount of civil penalty.

(8) The penalty assessed for any of the above violations shall be increased by 25 percent of the amount assessed if it occurs in any designated water supply watershed area.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-18. Judicial remedies.

(a) *Other remedies.* This article may be enforced by any other remedy at law or equity which the city is authorized to pursue, to include actions in the General Court of Justice for injunctive relief, other remedies authorized in G.S. Ch. 160A, Art. 19, Pt. 3. The civil penalties, criminal prosecution, and other remedies provided in this article are cumulative and not exclusive, and may be independently and separately pursued against the same person for the activity constituting a violation of this article. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies in other provisions of this Code or other laws and regulations.

Each day any violation of this Code shall continue shall constitute a separate offense, unless otherwise specified.

(b) *Notification of the state enforcement officials.*

(1) *Industrial and related facilities.*

a. When stormwater services discovers an apparent violation of an industrial or related facility's NPDES stormwater discharge permit or that the facility is not operating pursuant to its stormwater pollution prevention plan, stormwater services shall notify the appropriate local and state officials immediately.

b. When the discharge from the facility interferes significantly with the municipal separate storm sewer, and the facility fails to take appropriate actions upon notification by stormwater services, stormwater services may take immediate and appropriate measures to control the problem whether or not the facility is violating its NPDES permit and recover the cost of such action from the facility.

(2) *Animal waste lagoons.* When stormwater services discovers an apparent violation of an animal waste lagoon's permit or that the facility is not operating pursuant to its pollution prevention plan, stormwater services shall notify the appropriate local and state officials immediately.

(Ord. No. S2009-004, § 2, 5-26-2009)

Sec. 23-19. Appeal process.

(a) Any person who has been served a notice of violation or assessed a civil penalty under this article may request an appeal hearing from the stormwater manager, or designee, provided such appeal is taken within 30 days of the challenged action. The appellant's obligation to satisfy a notice of violation will not be delayed by a request for appeal. Notice of the appeal shall be given by filing with the stormwater manager, or designee, a written petition for a hearing. The written petition requesting the hearing must state name and address of the aggrieved person, a description of the challenged action, and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the stormwater manager shall, within five working days, transmit to the stormwater advisory board the notice of appeal and the papers and materials upon which the challenged action was taken. Within ten working days of receipt of said petition, informal proceedings may be held with the consent of the petitioner before the stormwater manager. If said grievance or grievances are not resolved at this informal proceeding, it shall be the duty of the stormwater manager to, within five working days of the date of the informal hearing, communicate the request for a hearing to the chairman of the stormwater advisory board. The stormwater advisory board shall hold a hearing within 30 days of the receipt of the notice of appeal. The stormwater advisory board shall give the appellant not less than ten days' notice of the date, time and place of the hearing. Any party may appear in person or by agent or attorney. In considering appeals, the stormwater advisory board shall have the authority to affirm, modify or reverse the challenged action.

(b) The stormwater advisory board shall make a final decision on the contested action within 60 days following the hearing.

(c) The stormwater advisory board shall transmit a copy of the decision by registered or certified mail, publication, personal service or posting of said decision on the property of the appellant.

(d) The decision of the stormwater advisory board shall be considered the final administrative action for the purposes of judicial review.

(e) If the appeal is in regards to the assessment of a civil penalty, and it has been deemed that each day constitutes a separate and distinct violation, the determination of the total civil penalty shall not be affected by the appeal process.

(f) Unless such written demand is made within the time specified herein, the action shall be final and binding.

(g) Any party aggrieved by the decision of the stormwater advisory board with regard to the issuance of a notice of violation or notice of assessment of a civil penalty shall have 30 days from the receipt of the decision of the stormwater advisory board to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Cumberland County Superior Court.

Sec. 23-19.1. Effective date.

This article shall become effective on July 1, 2009.
(Ord. No. S2009-004, § 2, 5-26-2009)

ARTICLE III. - STORMWATER CONTROL

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Sec. 23-20. - Title, purpose, application.

(a) The provisions of this article shall constitute and be known as the "Stormwater Control Ordinance of Fayetteville, North Carolina".

(b) The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff will minimize damage to public and private property, prevent personal damage and bodily harm, ensure a functional drainage system, reduce the effects of development on land and stream channel erosion, promote the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, and maintain as nearly as possible the predeveloped runoff characteristics of the area, and facilitate economic development while mitigating associated flooding and drainage impacts. Additionally, the purpose of this article is to comply with the post construction stormwater requirements as per the city's NPDES stormwater discharge permit.

(c) Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.

(d) The application of this article and the provisions expressed herein, shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. In addition, if site characteristics indicate that complying with these minimum requirements will not provide adequate designs or protection for local property or residents, it is the designer's responsibility to exceed the minimum requirements as necessary. The city engineer or designee shall be responsible for the coordination and enforcement of the provisions of this article.

(e) Compliance with all applicable local, state, and federal regulations and permits shall be the responsibility of the applicant. Other stormwater regulations to consider when complying with this article include, but are not limited to, the following:

- (1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;
- (2) Federal wetland permits;
- (3) Water quality certifications; and
- (4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-21. - Definitions.

For the purpose of this article, the following terms, phrases, and words, and their derivatives, shall have the meaning given herein:

Adequate channel shall mean a natural or manmade channel or pipe which is capable of conveying the runoff from the design storm events without flooding existing structures or causing property damage.

Best management practice (BMP) shall mean a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices which have been demonstrated to effectively control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

Built-upon area shall mean that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and

recreation facilities such as tennis courts. Built-upon area does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

City shall mean the City of Fayetteville, North Carolina.

City clerk shall mean the City Clerk of the City of Fayetteville, North Carolina, or his/her designee.

City council shall mean the duly elected Governing Body of the City of Fayetteville, North Carolina.

City engineer shall mean the City Engineer of the City of Fayetteville, North Carolina, or his/her designee.

City engineering and infrastructure department shall mean the Engineering and Infrastructure Department of the City of Fayetteville, North Carolina.

City manager shall mean the City Manager of the City of Fayetteville, North Carolina, or his/her designee.

Cross-drain culvert shall mean a structure designed to convey a watercourse under a roadway, railway, pedestrian walk, or through an embankment.

Design report shall mean the report that accompanies the stormwater design plan and includes data used for engineering analysis, results of all analysis, design and analysis calculations (including results obtained from computer programs), and other engineering data that would assist the city engineer in evaluating proposed stormwater management facilities.

Design storm events shall mean the frequency storm used for the design of stormwater management facilities.

Designer shall mean a registered professional who is permitted to prepare plans and studies required by this article.

Detention structure shall mean a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

Developed land use conditions shall mean the land use conditions according to the current city land use map or proposed site plan. Also, the conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, quality, volume or direction of stormwater runoff.

Development shall (to the extent permitted by law) mean any of the following actions undertaken by a public or private individual or entity:

- (1) All land altering activities associated with the division of a lot, tract, or parcel of land into two or more lots plots, sites, tracts, parcels or other divisions by plan or deed;
- (2) The construction, installation, or alteration of a structure, impervious surface, or drainage facility;
- (3) Any land change including, without limitation to, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land; or
- (4) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, and mud, sand or rock of a site.

Easement shall mean a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Erosion shall mean the process by which ground surface is worn away by the action of wind and/or water.

Exemption shall mean those development activities that are not subject to the stormwater requirements contained in this article.

Existing land use condition shall mean the land use conditions existing at the time the design plans are submitted for approval.

FEMA-designated floodplain shall mean the 100-year floodplain shown on the most current FEMA flood insurance rate map or flood boundary and floodway map. This shall include both the detailed 100-year floodplain which shows a 100-year flood elevation and the approximate 100-year floodplain.

Functional maintenance shall mean any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes set forth in this article, and to prevent structural failure of such facilities. Functional maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics aspects associated with stormwater management facilities.

Grading shall mean excavating, filling (including hydraulic fill), or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

Impervious shall mean the condition of being impenetrable by water.

Imperviousness shall mean the degree to which a site is impervious.

Infiltration shall mean the passage or movement of water into the soil subsurface.

Interior culvert shall mean a culvert that is not located under a roadway, railway, or pedestrian walk.

Maintenance (as relates to BMPs or other stormwater management facilities). See "functional maintenance" or "routine maintenance".

100-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one 100 years. It also may be expressed as an exceedance probability with a one percent chance of being equaled or exceeded in any given year.

On-site stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff within and for a single development.

One-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one year. It also may be expressed as an exceedance probability with a 100 percent chance of being equaled or exceeded in any given year.

Predevelopment conditions shall mean those which existed on the site at the time this article became effective.

Preliminary plat shall mean the preliminary plat of a subdivision submitted pursuant to the subdivision regulations of the city.

Pervious pavement shall mean concrete and asphalt paving materials that allow for infiltration of stormwater into a storage area with void spaces that provide temporary storage.

Record drawings shall mean a set of engineering or site drawings that delineate the specific permitted stormwater management facility(ies) as actually constructed.

Redevelopment shall mean any development on previously developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Regional stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff for more than one development.

Regulated floodplain shall mean the floodplain area designated by FEMA regulations or designated by the city.

Retention structures shall mean a permanent structure whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

Routine maintenance shall mean any action to enhance the aesthetics aspects associated with stormwater management facilities. Routine maintenance shall

include actions such as grass cutting, trash removal, and landscaping.

Site shall mean any lot, plot, parcel or tract of land.

Stormwater design plan shall mean the set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, concepts and techniques that will be used to control stormwater as required by this article. Also included are the supporting engineering calculations and results of any computer analysis.

Stormwater management shall mean the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to minimize accelerated channel erosion, increased flood damage, and/or degradation of water quality and in a manner to enhance and ensure the public health, safety, and general welfare which shall include a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land.

Stormwater management facilities shall mean those structures and facilities that are designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the drainage system. This includes all stormwater quantity and quality facilities.

Stormwater runoff shall mean the direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm drain, or other concentrated flow during and following precipitation.

Subdivision shall mean that which is defined in chapter 25, Subdivisions, of this Code of Ordinances; and G.S. 160A-376.

Ten-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedance probability with a ten percent chance of being equaled or exceeded in any given year.

Thoroughfare shall mean all numbered routes and all roads with four or more travel lanes.

25-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as an exceedance probability with a four percent chance of being equaled or exceeded in any given year.

Variance shall mean the modification of the minimum stormwater management requirements for specific circumstances where strict adherence of the requirements would result in practical difficulties or undue hardship and not fulfill the intent of this article.

Water quality shall mean those characteristics of stormwater runoff that relate to

the physical, chemical, biological, or radiological integrity of water.

Water quantity shall mean those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

Watershed shall mean the drainage area contributing stormwater runoff to a single point.

Wetland shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas as determined by the U.S. Army Corps of Engineers.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-22. - Scope of article.

(a) No person shall develop any land without having provided for appropriate stormwater management measures that control or manage stormwater runoff, in compliance with this article, unless exempted in section 23-24 below.

(b) The provisions of this article shall apply throughout the incorporated areas in the City of Fayetteville, North Carolina.

(c) The city engineering and infrastructure department shall be responsible for the coordination and enforcement of the provisions of this article, and shall have the authority to enforce this article in accordance with the enforcement provisions.

(d) The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other local requirements authorized by state statute. Where other requirements are more stringent those shall apply. This article does not eliminate the necessity for obtaining other permits as may be required by other governmental entities.

(e) This article shall apply to both public and privately owned or maintained drainage systems, and stormwater management facilities.

(f) *Map.* The provisions of this article shall apply within the areas designated on the map titled "Stormwater Map of Fayetteville, North Carolina", which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this article.

The Stormwater Map shall be kept on file by the city engineer and shall be updated to take into account changes in the land area covered by this article and the geographic location of all stormwater management facilities permitted under this article. In the event of a dispute, the applicability of this article to a particular

area of land shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-23. - Powers of the department.

(a) The city engineering and infrastructure department shall have the power to administer and enforce all regulations and procedures adopted to implement this article, including the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article, and to enforce the provisions of this article in accordance with its enforcement provisions.

(b) The city engineering and infrastructure department can:

- (1) Administer, coordinate, and oversee design, construction, and operation and maintenance of city stormwater facilities and conveyances;
- (2) Implement or oversee implementation of development standards and guidelines;
- (3) Determine the manner in which stormwater facilities should be operated;
- (4) Inspect private systems which discharge to a public drainage system;
- (5) Require compliance with maintenance requirements;
- (6) Advise the other city departments on issues related to stormwater;
- (7) Protect facilities and properties controlled by the city and prescribe how they are used by others; and
- (8) Require proposed developments, not exempt from this article, to comply with the terms of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-24. - Exemptions from requirements.

The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management measures. Even if exempt from this article, the following as well as all development activity is not allowed to divert water to adjacent property to cause a nuisance and/or property damage and should comply with the intent of this article.

- (1) Construction or improvement of a single-family residence (single-family residence - separately built) or their accessory buildings that is separately built and not part of multiple construction or a subdivision development

approved under this article and that cumulatively disturbs less than one acre. If included in a subdivision plan, all development activities must follow the stormwater management plan that has been approved for the subdivision.

(2) New developments that do not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.

(3) Redevelopment or new construction to existing development that does not include more than 5,000 square feet of new impervious area and that cumulatively disturbs less than one acre.

(4) Land disturbing activities for agricultural uses.

(5) Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products where all of the following occur:

- a. The growing of trees;
- b. The harvesting of timber, leaves, or seeds;
- c. The regeneration of either timely replanting of trees or natural generation;
- d. The application of applicable "best management practices", including the N.C. Department of Environment and Natural Resources "Forest Practice Guidelines Related to Water Quality"—Title 15A North Carolina Administrative Code subchapter 11, sections 1.010—.0209 and all successor documents; and
- e. A forest management plan is prepared or approved either by a professional forester registered in the State of North Carolina or by the Division of North Carolina Forest Resources. Copies of the forest management plan shall be provided to the city upon request.

(6) Land disturbing activities for which a permit is required under the Mining Act of 1972; G.S. Ch. 74, Article 7.

(7) Projects which commenced prior to the application of this article, such as:

- a. Approved subdivisions and site plans. However, if the approved subdivision or site plan is modified or changed after the effective date of this article, the proposed development would have to comply with all requirements of this article in its entirety.
- b. Projects which have an outstanding unexpired valid building permit in compliance with either G.S. 160A-422 or G.S. 153A-357 or have an outstanding unexpired valid soil erosion permit in compliance with G.S.

160A-458; provided that, upon application of any impervious surfaces, the exemption based on a valid soil erosion permit shall not apply.

c. Projects which have obtained a state permit, such as landfills and land application of residuals.

d. Projects which have continuing vested rights in compliance with G.S. 160A-385.1 or G.S. 153A-344.1.

Phased developments do not constitute separate developments and the total area of all phases will be used to determine exemption requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-25. - Scope of stormwater design plans.

(a) The following items relate to the general scope of plans required by this article:

(1) In developing plans for subdivisions, individual lots in a residential development shall not be considered to be separate development activities and shall not require individual permits. Instead the subdivision development, as a whole, shall be considered to be a single development activity. Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.

(2) For developments that have different planned phases of development, if all phases are covered by the approved stormwater design plan, one permit will be given for the entire development so that new permits will not be needed for each phase of development.

(b) In subdivisions, lots should generally be graded in such a manner that surface runoff does not cross more than two lots before it is collected in a system of open channels, closed conduits, or a combination of both.

(c) For all development activities, concentrated stormwater runoff leaving a development site must be discharged directly into a well-defined, natural or manmade off-site receiving channel or pipe. If the receiving channel or pipe is found to be inadequate, the developer must incorporate measures to either improve the receiving channel or pipe to an adequate condition, or detain/retain runoff on the site to a level that can be accommodated by the receiving channel or pipe. Newly constructed channels or pipes shall be designed as adequate channels or pipes.

The development site should be designed to maximize the amount of rainfall that infiltrates into the soils and minimize the amount of direct flow into public drainage facilities, adjoining streets, waterbodies, watercourses, and wetlands, to the extent feasible.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-26. - Stormwater design plans and approval process.

(a) Unless granted an exemption from this article, a stormwater design plan (as part of the construction plans) for each development activity shall be submitted for review by the city engineer for the entire development activity, or any portion thereof. If granted an exemption from this article, those development activities are still required to submit a stormwater design plan for review by the city engineer to ensure that all other city minimum requirements have been satisfied.

(b) *Permit required.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to the administrative manual.

(c) *Consultation meeting.* A land owner or developer may request a consultation meeting with the city engineer to review and discuss the stormwater management system to be utilized in a proposed *development* project. The purpose of the meeting(s) is to discuss any questions for stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering commences.

(d) All stormwater design plans as required by this article shall be submitted to the city engineering and infrastructure department for review and approval. The applicant shall submit three copies of the final plans. Within 30 calendar days from and after receipt of the plans, the city engineer shall issue a decision approving, rejecting, or conditionally approving the plans with modifications. The review and approval time frames for all subsequent submittals on the same plans, if required, shall be 15 calendar days.

(e) All preliminary plats of the development shall be consistent with the stormwater design plan required in subsection (a) of this section.

(f) Should any stormwater design plan involve any stormwater management facilities or land to be dedicated to public use, the same information shall also be submitted for review and approval to the department having jurisdiction over the land or other appropriate departments or agencies identified by the city engineer for review and approval. This stormwater design plan shall serve as the basis for all subsequent construction.

(g) A stormwater design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans. The stamp of approval on the plans is solely an acknowledgement of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the applicant or any other person concerning the safety, appropriateness, or effectiveness of any provision, or omission from the stormwater design plan.

(h) Following approval of stormwater design plans, an owner shall have a

vested right to develop the property in accordance with the conditions of approval for two years. Extensions or renewals of the plan approvals may be granted by the city engineer upon written request by the person responsible for the development activity.

(i) All requirements for sites located in water supply watersheds as set forth in the Code of Ordinances must be met. In addition, all state and/or federal requirements such as U.S. Army Corps of Engineers wetland permits must be met, if required.

(j) Administrative manual. For applications required under this article, the city engineering and infrastructure department shall compile the application requirements, submission schedule, fee schedule, a copy of this article, and information on how and where to obtain the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality in an Administrative Manual, which shall be made available to the public.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-27. - Plan requirements.

Stormwater design plans shall include as a minimum the following:

- (1) A vicinity map indicating a north arrow, scale, boundary lines of the site, and other information necessary to locate the development site.
- (2) The maximum scale shall be one inch equals 100 feet.
- (3) The existing and proposed topography of the development site except for individual lot grading plans in single-family subdivisions. Profiles of proposed streets in single-family subdivisions shall be provided showing existing and proposed grades.
- (4) Physical improvements on the site, including present development and proposed development.
- (5) Location, dimensions, elevations, and characteristics of all existing and proposed stormwater management facilities.
- (6) Stormwater design plans shall include designation of all easements needed for inspection and emergency maintenance of the stormwater management facilities along with those easements needed for the maintenance of the drainage system conveying public water. As a minimum, easements shall have the following characteristics:
 - a. Provide adequate access to all stormwater management facilities for inspection and emergency maintenance. Provide a minimum 20-foot permanent maintenance access easement from a public or private right-of-way to all stormwater management facilities. Provide a

minimum 10-foot permanent drainage easement around the perimeter of all stormwater management facilities. The perimeter shall be the edge of facilities such as sand filters or bioretention areas. For wet and dry extended detention basins and similar facilities, the perimeter shall be the top of bank where the stormwater is stored. Any fences constructed around such facilities shall be outside of the 10-foot permanent drainage easement.

b. Provide adequate access to all parts of the public drainage system and structures.

c. Provide a minimum 20-foot easement for closed pipe systems. The required easement width shall be computed as follows:

Width = 10 feet + (the diameter or total outside width for multiple pipes) + (2 times the invert depth).

The easement width should be rounded to the nearest five-foot increment.

Drainage easements associated with culverts should be centered over the culvert but may be offset as long as a minimum of ten feet is provided on both sides.

d. Provide easements centered on watercourses with the minimum widths based on the following:

Easement Widths for Open Channels

<u>Drainage Area, acres</u>	<u>Easement Width, feet</u>
< 10 acres	10 feet on each side
10 to < 25 acres	20 feet on each side
25 to < 50 acres	30 feet on each side
50 to < 100 acres	40 feet on each side
> 100 acres	Greater of the floodway width or 50 feet

e. Restriction on easements shall include prohibiting all fences without gates and structures which would interfere with access to the easement areas and/or the maintenance function of the drainage system. If an obstruction (fence, wall, landscaping, etc.) is located in a drainage easement and inhibits access to the drainage system, the city shall remove the obstruction as necessary but will not be obligated to replace it.

(7) In subdivisions where a stormwater management facility serves more than one lot, the facility shall be located on a separate lot that is owned by the homeowner association. This lot shall have a minimum frontage of 20

feet.

(8) The stormwater design plan shall include all engineering calculations needed to design the system and associated structures including existing and developed velocities, peak rates of discharge, and hydrographs of stormwater runoff at all existing and proposed points of discharge from the site.

(9) Description of site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the development activity.

(10) Construction and design details for structural controls.

(11) If there are FEMA-designated floodplains, they must be shown. All construction in the FEMA-designated floodplain must conform to chapter 12, Flood Damage Prevention, of this Code of Ordinances. A separate floodplain submittal may be required.

(12) A plan for maintenance of privately owned stormwater management facilities shall be included as part of the stormwater design plan which as a minimum shall specify the following:

- a. Types of maintenance activities which should be anticipated so that the proposed drainage system and stormwater management facilities will operate as designed.
- b. The frequency and amount of maintenance that should be anticipated.
- c. The equipment that will be required to perform the needed maintenance.
- d. Name, address, and telephone number of the party responsible for maintenance.

Section 23-39 outlines the requirements for the operation and maintenance agreement which must be executed on all privately owned stormwater management facilities. The city shall provide a standard agreement for this purpose.

(13) Any existing wetlands on the property shall be delineated on both the stormwater design plan as well as the final plat.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-28. - Plan hydrologic criteria.

(a) The hydrologic criteria to be used for the stormwater design plans shall be as follows:

<u>Description</u>	<u>Design Storm</u>
Permanent Storage Facilities	1 and 10
Roadway Inlets	5-year
Swales	10-year
Storm Drainage Systems	10-year
Open Channels	25-year
Culverts (Subdivision streets)	25-year
Culverts (Thoroughfare roads)	50-year
Emergency Spillways	100-year
Energy Dissipaters	Same as Outlet System

(b) All hydrologic analysis will be based on land use conditions as specified in section 23-29, below.

(c) For the design of storage facilities, a secondary outlet device or emergency spillway shall be provided to discharge the excess runoff in such a way that no danger of loss of life or facility failure is created.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-29. - Plan land use conditions criteria.

For all stormwater management facilities, a hydrologic-hydraulic study shall be done showing how the drainage system will function with the proposed facilities. For such studies the following land use conditions shall be used.

- (1) For the design of the facility outlet structure, use developed land use conditions for the area within the proposed development and existing land use conditions for upstream areas draining to the facility.
- (2) For any analysis of flood flows downstream from the proposed facility, use existing land use conditions for all downstream areas.
- (3) All stormwater management facilities, emergency spillways shall be checked using the 100-year storm and routing flows through the facility and emergency spillways. For this analysis, developed land use conditions representing ultimate build-out conditions shall be used for all areas draining to the facility.
- (4) The effects of existing upstream detention facilities can be considered in the hydrologic-hydraulic study only if such facilities have been constructed and maintained, as detention facilities, as required by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-30. - Plan wetlands criteria.

Wetland areas shall not be disturbed until documentation is provided to the city engineer to show that the applicant has received approval from the U.S. Army Corps of Engineers regarding appropriate permits and approval of development activities. Stormwater design plans shall not be approved until this documentation has been provided to the city engineer. The city does have the option of providing conditional approval of the stormwater design plans that stipulate the documentation shall be provided prior to any disturbance of wetland areas.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-31. - Minimum stormwater quantity control requirements.

(a) Install stormwater management facilities to limit the one-year and ten-year developed peak discharge rates to predeveloped peak discharge rates or to the amount that can be accommodated by the receiving downstream drainage system, whichever is more restrictive.

(b) Watersheds that have well documented water quantity problems may have more stringent, or modified, design criteria [such as controlling the 25-year developed peak discharge rate to the predeveloped peak discharge rate] determined by the city engineer that is responsive to the specific needs of that watershed.

(c) Stormwater management facilities may include both structural and nonstructural elements. Natural swales and other natural runoff conduits shall be retained where practicable.

(d) Stormwater design plans can be rejected by the city engineer if they incorporate structures and facilities that are not easily maintained.

(e) The drainage system and all stormwater management structures within the city (including both public and private portions) will be designed to the same engineering and technical criteria and standards. The design and construction must be sealed by a registered professional (as outlined in section 23-35) as meeting or exceeding public drainage system standards. The city engineering and infrastructure department's review will be the same whether the portion of the drainage system will be under public or private control or ownership.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-32. - Minimum stormwater quality control requirements.

(a) *General standards.* All development and redevelopment to which this article applies shall comply with the standards of this section.

(b) *Development standards for low-density projects.* Low-density projects shall comply with each of the following standards:

(1) No more than two dwelling units per acre or 24 percent built-upon area.

(2) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(3) Built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(4) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(5) A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(c) *Development standards for high-density projects.* A project not consistent with the requirements for a low-density project may be permitted as a high-density project and shall implement stormwater control measures that comply with each of the following standards:

(1) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

(2) High-density projects must discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one year, 24-hour storm.

(3) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS).

(4) For BMPs that require a separation from the seasonal high water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.

(5) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c).

(6) Built-upon area shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(7) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(d) *Standards for stormwater control measures.*

(1) *Evaluation according to contents of Stormwater Best Management Practices Manual.* All stormwater control measures and stormwater treatment practices required under this article shall be evaluated by the city engineer according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality. The city engineer shall determine whether proposed BMPs will be adequate to meet the requirements of this article.

(2) *Determination of adequacy; presumptions and alternatives.* Stormwater

treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The city engineer may require the applicant to provide the documentation, calculations, and examples necessary for the city engineer to determine whether such an affirmative showing is made.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-33. - Approval and permit requirements.

(a) No final site plan or subdivision plan approval shall be issued or modified without the following items:

- (1) An approved stormwater design plan;
- (2) An executed operation and maintenance agreement, if required, in accordance with section 23-39;
- (3) The posting of an installation performance guarantee, if required, in accordance with section 23-41;
- (4) An approved erosion control plan, if applicable;
- (5) Right of entry given to the city for city personnel to enter property for emergency maintenance if necessary; and
- (6) Any off-site easements needed.

(b) No final certificate of occupancy permit shall be issued pursuant to chapter 7 of this Code of Ordinances or final plat approved without the following:

- (1) All final inspection requirements as per section 23-37 are met;
- (2) The posting of an installation performance guarantee, if required, in accordance with section 23-41;
- (3) Receipt of record drawings as outlined in section 23-37; and
- (4) A recorded operation and maintenance agreement, if required, in accordance with section 23-39

(c) All land clearing, construction, development and drainage shall be done in

accordance with the approved stormwater design plan or previously approved revisions.

(d) Submittal and/or approval of stormwater design plans does not preclude the applicant from obtaining all other necessary permits and compliance with appropriate regulations including, but not limited to, the following:

- (1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;
- (2) Federal wetland permits;
- (3) Water quality certifications; and
- (4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-34. - Building permit or street plan approval suspension and revocation.

(a) The following conditions shall represent grounds for suspension and/or revocation for building permit(s) and/or street plan approval(s):

- (1) Any violation(s) of the conditions of the stormwater design plan approval;
- (2) Construction not in accordance with the approved plans;
- (3) Approval of a stormwater design plan has not been obtained;
- (4) Noncompliance with correction notice(s); or
- (5) The existence of an immediate danger in a downstream area.

(b) If one or more of these conditions are found, a written notice of violation shall be served upon the owner or authorized representative and the time in which to correct the deficiencies shall be specified. The notice shall set forth the measures necessary to achieve compliance with the plan. Correction of these violations must be started immediately or the owner shall be deemed in violation of this article.

(c) If appropriate remedial actions as outlined in the written notice are not completed within the specified time period, a building permit or street plan approval will be suspended or revoked within seven days. The suspension or revocation will then be in force until the development is in compliance with this article.

(d) If a violation of this article is occurring that will cause significant damage to downstream property or structures, the city engineer can issue an immediate suspension or revocation.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-35. - Professional registration requirements.

(a) Stormwater design plans and design reports that are incidental to the overall or ongoing site design shall be prepared, and stamped/sealed by a qualified registered professional engineer, land surveyor or landscape architect, using acceptable engineering standards and practices. All other stormwater design plans and design reports shall be prepared, and stamped/sealed by a qualified registered professional engineer, using acceptable engineering standards and practices.

(b) The engineer, surveyor, or landscape architect shall perform services only in areas of his/her competence, and shall undertake to perform engineering or land surveying assignments only when qualified by education and/or experience in the specific technical field. In addition, the engineer, surveyor, or landscape architect must verify that the plans have been designed in accordance with this article and the standards and criteria stated or referred to in this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-36. - Fees.

The initial fees associated with the operation of this article shall be set annually by city council as part of the annual budget ordinance, or by an amendment thereto. If no amendment to the prior year's fees is proposed or adopted by city council as part of the budget ordinance, then the prior year's fees shall continue in full force and effect. A list of the fees proposed at the enactment of this article for plan review and other fees associated with this article may be obtained from the city engineering and infrastructure department.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-37. - Construction and inspection.

(a) The owner or his representative shall notify the city engineer before commencing any work to implement the stormwater design plan, at key milestones noted during plan approval, and upon completion of the work.

(b) Any portion of the construction which does not comply with the stormwater design plan shall be promptly corrected by the permittee.

(c) The city engineer will notify the person responsible for the development activity in writing when violations are observed describing the following:

- (1) Nature of the violation;
- (2) Required corrective actions; and
- (3) The time period for violation correction.

(d) A final inspection shall be conducted by the city engineer upon completion of the work included in the approved stormwater design plan to determine if the completed work is constructed in accordance with the plan.

(e) The permittee shall provide record drawings signed and sealed by a registered professional (as outlined in section 23-35) to be submitted upon completion of the stormwater management facilities included in the stormwater design plan. The record drawings shall be referenced to North Carolina State Plane Coordinates and shall be provided in hard copy form as well as a digital file which is compatible with the city's software. The registered professional shall state on the record drawings that:

(1) The facilities have been constructed as shown on the record drawings; and

(2) The facilities meet the approved stormwater design plan and specifications.

(f) As a minimum, the record drawings shall contain the following:

(1) Mark through and redraw drainage structures when the as-built location deviates more than ten feet horizontally from the location indicated on the plans.

(2) Show all drainage structures, pipe inverts, and rim elevations.

(3) Show distances between drainage structures on the plan view as well as the profile.

(4) Show the final design specifications for all stormwater management facilities and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-38. - Ownership and maintenance of stormwater management facilities.

(a) All stormwater management facilities shall be privately owned and maintained unless the city accepts the facility for city ownership and maintenance. The owner thereof shall grant to the city a right of entry which allows for inspection and emergency repair, in accordance with the terms of the operation and maintenance agreement set forth in section 23-39, hereof.

(b) Single-family residential stormwater management facilities accepted for maintenance. The city shall accept functional maintenance responsibility of structural stormwater management facilities that are installed pursuant to this article following a warranty period of one year from the date of record-drawing certification described in section 23-37, or from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater

management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage;
- (2) Is satisfactorily maintained during the one-year warranty period by the owner or designee;
- (3) Meets all the requirements of this article;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction; and
- (5) Prior to the release of the installation performance guarantee as outlined in section 23-41 (b), the developer shall pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of this article.

The city engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

(c) The person responsible for maintenance of any stormwater management facility installed pursuant to this article and not covered under subsection (b) above, shall submit to the city engineer an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the landowner;
- (2) The recorded book and page number of the lot of each stormwater management facility;
- (3) A statement that an inspection was made of all stormwater management facilities;
- (4) The date the inspection was made; and
- (5) A statement that all inspected stormwater management facilities are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article.

All inspection reports shall be on forms supplied by the city engineer. An original

inspection report shall be provided to the city engineer beginning one year from the date of record-drawing certification and each year thereafter on or before the date of the record-drawing certification.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-39. - Operation and maintenance agreement.

(a) *In general.* At the time record drawings are provided to the city engineer as described in section 23-37 and prior to final approval of a project for compliance with this article, but in all cases prior to placing the stormwater management facilities into service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the stormwater management facility. Failure to execute an operation and maintenance agreement within the timeframe specified by the city engineer may result in assessment of penalties as specified in section 23-46. For single-family residential subdivisions, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement for a period of one year from the date of record-drawing certification described in section 23-37, or for a period of one year from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later. At the end of the one-year timeframe, the stormwater management facility shall be inspected as outlined in section 23-41 in order to release the performance guarantee. Once the stormwater management facility has passed inspection, primary responsibility for carrying out the provisions of the maintenance agreement shall be transferred to a homeowners' association, property owners' association, or similar entity. In cases where the city is accepting functional maintenance responsibility, such responsibility shall be transferred to the city once the stormwater management facility has passed inspection. A homeowners' association, property owners' association, or similar entity shall still be responsible for routine maintenance such as mowing the grass and picking up litter.

(1) The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the stormwater management facility, and shall state the terms, conditions, and schedule of maintenance for the stormwater management facility. In addition, it shall grant to the city a right of entry in the event that the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the stormwater management facility.

(2) The operation and maintenance agreement must be approved by the city engineer prior to final approval, and it shall be referenced on the final plat and shall be recorded with the Cumberland County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement

shall be given to the city engineer within 14 days following its recordation.

(b) *Special requirement for homeowners' and other associations.* For all stormwater management facilities required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity in a single-family residential subdivision, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities. If stormwater management facilities are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater management facilities.

(3) Both developer and homeowners' association contributions shall fund the escrow account. Prior to the release of the installation performance guarantee as outlined in Section 23-41 (b), the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the stormwater management facilities. Two-thirds (2/3) of the total initial construction cost shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the stormwater management facilities. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater management facilities.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the stormwater management facilities or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall

thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any stormwater management facilities, and the city shall not be liable to any person for the condition or operation of stormwater management facilities.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the stormwater management facility, unless the city has agreed in writing to assume the maintenance responsibility for the stormwater management facility and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-40. - Inspection program.

(a) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in stormwater management facilities; and evaluating the condition of stormwater management facilities.

(b) If the owner or occupant of any property refuses to permit such inspection, the city engineer shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2, or its successor. No person shall obstruct, hamper or interfere with the city engineer while carrying out his or her official duties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-41. - Performance guarantee for installation.

(a) *Commercial developments.*

(1) *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.

(2) *Amount.* The amount of an installation performance guarantee shall be equal to at least 75 percent of the total estimated construction cost of the stormwater management facilities approved under the permit. The installation performance guarantee shall remain in place until at least one year after final approval.

(3) *Use of performance guarantee.*

a. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.

b. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.

c. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.

d. *Refund.* No sooner than one year after final approval, the applicant may petition the city to release the value of the performance guarantee. Upon receipt of such petition, the city engineer shall inspect the stormwater management facility to determine whether the controls are performing as designed and intended. The city engineer shall present the petition, inspection report, and recommendations to the director of the city engineering and infrastructure department.

1. If the director of the city engineering and infrastructure department approves the report and accepts the petition, the city may release the installation performance guarantee upon execution by the applicant of an indemnification agreement in favor of the city which shall be a covenant upon the property and run with the land.

2. If the director of the city engineering and infrastructure department does not accept the report and rejects the petition, the director of the city engineering and infrastructure department shall provide the applicant with instruction to correct any deficiencies and

all steps necessary for the release of the installation performance guarantee.

(b) *Single-family residential subdivisions.*

(1) *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to approval of a final plat in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.

(2) *Amount.* The amount of an installation performance guarantee shall be equal to at least 100 percent of the total estimated construction cost of converting the erosion control measure to the stormwater management facilities approved under the permit. The installation performance guarantee shall remain in place until at least one year after the facility starts to function as a stormwater management facility.

(3) *Use of performance guarantee.*

a. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.

b. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.

c. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.

d. *Refund.* No sooner than one year after final approval as outlined in section 23-39, the applicant may petition the city to release the value of the performance guarantee. Upon receipt of such petition, the city engineer shall inspect the stormwater management facility to determine whether the controls are performing as designed and intended. The city engineer shall present the petition, inspection report, and recommendations to the director of the city engineering and

infrastructure department.

1. If the director of the city engineering and infrastructure department approves the report and accepts the petition, the city may release the installation performance guarantee upon execution by the applicant of an indemnification agreement in favor of the city which shall be a covenant upon the property and run with the land.
2. If the director of the city engineering and infrastructure department does not accept the report and rejects the petition, the director of the city engineering and infrastructure department shall provide the applicant with instruction to correct any deficiencies and all steps necessary for the release of the installation performance guarantee.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-42. - Notice to owners; deed recordation and indications on plat.

The applicable operations and maintenance agreement pertaining to every stormwater management facility shall be referenced on the final plat and shall be recorded with the Cumberland County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Cumberland County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. For condominiums, the operations and maintenance agreement shall be recorded with the association documents.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-43. - Records of installation and maintenance activities.

The owner of each stormwater management facility shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record of inspection and shall submit the same upon reasonable request to the city engineer.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-44. - Variances from requirements.

- (a) The city council may grant a variance from the requirements of this article if:
 - (1) There are exceptional circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of this article;
 - (2) The variance is in harmony with the general purpose and intent of this article; and

(3) In granting this variance, water quality has been protected, public safety and welfare has been assured, and substantial justice has been done.

(b) A written request for a variance shall be submitted to the city clerk and shall state the specific variance sought and the reasons, with supporting data, for their granting. The request shall include descriptions, drawings, calculations and any other information that is necessary to evaluate the proposed variance.

(c) The city engineer will conduct a review of the request for a variance and submit a report to the city council.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-45. - Appeals.

The disapproval or required modification of any proposed stormwater design plan, or the determination by the city of noncompliance, or failure to maintain shall entitle the aggrieved person to appeal this decision or lack of action to the city council. Such appeal must be made in writing to the city clerk and the city manager within 15 days of written notice of disapproval or modification of a stormwater design plan, or determination of either noncompliance or failure to maintain or within 30 days of the receipt of a notice of assessment of a civil penalty, made or rendered by the city engineer in the enforcement of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-46. - Enforcement.

(a) *General.*

(1) *Authority to enforce.* The provisions of this article shall be enforced by the city engineer, his or her designee, or any authorized agent of the city. Whenever this section refers to the city engineer, it includes his or her designee as well as any authorized agent of the city.

(2) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.

(3) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(4) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein, may include

any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this section, responsible person(s) shall include, but not be limited to:

a. *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.

b. *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(b) *Remedies and penalties.* The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(1) *Remedies.*

a. *Withholding of certificate of occupancy.* The city engineer or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. This remedy shall not apply to buildings in a single-family residential subdivision.

b. *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the city engineer or other authorized agent may withhold, and the city council may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.

c. *Injunction, abatements, etc.* The city engineer, with the written authorization of the city manager, may institute an action in a court of

competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.

d. *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the city engineer, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(2) *Civil penalties.*

a. *Violations of article.* A violation of any of the provisions of this article or rules or other orders adopted or issued pursuant to this article may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the city engineer of a change of address shall not relieve the violator's obligation to comply with this article or to pay such a penalty.

b. *Amount of penalty.* The civil penalty for each violation of this article may be up to the maximum allowed by law. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the city engineer shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this article; whether the violation was committed willfully; whether the violator reported the violation to the city engineer; and the prior record of the violator in complying or failing to comply with this article or any other post construction article or law. The city engineer is authorized to vary the amount of the per diem penalty based on criteria specified in the administrative manual and based on relevant mitigating factors. Civil penalties collected pursuant to this article shall be credited to the city's general fund as nontax revenue.

c. *Notice of assessment of civil penalty.* The city engineer shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in subsection (2)e., below.

d. *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the city engineer within 30 days after it is due, or does not request a hearing as provided in subsection (2)e., below, the city engineer shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Cumberland County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

e. *Appeal of remedy or penalty.* The issuance of a notice of assessment of a civil penalty by the city engineer shall entitle the responsible party or entity to an appeal before the city council if such person submits written demand for an appeal hearing to the city clerk within 30 days of the receipt of a notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by city council. The appeal of a notice of assessment of a civil penalty shall be conducted as described in section 23-45 of this article.

(3) *Criminal penalties.* A violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(c) *Procedures.*

(1) *Authority to inspect.* The city engineer shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the activity is being conducted in accordance with this article and the approved stormwater design plan, and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the city engineer while the city engineer is inspecting or attempting to inspect an activity under this article.

(2) *Notice of violation and order to correct.* When the city engineer finds that any building, structure, or land is in violation of this article, the city engineer shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this article, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in this section of this article. In determining the measures required and the time for

achieving compliance, the city engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The city engineer may deliver the notice of violation and correction order personally, by the Fayetteville Police, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the city engineer may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

(3) *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the city engineer a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the city engineer may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The city engineer may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The city engineer may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(4) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the city engineer, the city engineer shall determine if the violation is corrected. If the violation is not corrected, the city engineer may act to impose one or more of the remedies and penalties authorized by this article.

(5) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the city engineer may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The city engineer may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-47. - Relationship to other laws, regulations, and private agreements.

(a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other article, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-48. - Severability.

If any term, requirement, or provision of this article or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this article or the application of such terms, requirements and provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, requirement or provision of this article shall be valid and be enforced to the fullest extent permitted by law.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-49. - Effective date.

This article shall become effective on January 1, 2009.

(Ord. No. S2008-020, § 1, 10-27-2008)